

[Mr. K. Paramesvaran Pillai.]

FREE PASS RULES COMMITTEE.

DEPUTY PRESIDENT: The next item on the agenda put into my hands refers to the election of members for the Free Pass Rules Committee. That will be taken up after the legislative business of the day is over. The non-official members are requested to meet under the Presidency of the Deputy President to elect four members for the formation of a committee to consider the draft revised Forest Rules regulating the issue of passes for private timber under Section 33 of the Forest Regulation, II of 1068, as amended by Regulations IV of 1071, IX of 1085, IV of 1089, and VIII of 1097.

THE LIMITATION REGULATION AMENDMENT BILL.

DEPUTY PRESIDENT: The next item to which we should pass on is the question that the Limitation Regulation Amendment Bill be referred to a Select Committee. I understand that, owing to some misconception, some members were not able to offer their constructive suggestions on the general principles underlying the Bill, and that the Select Committee proposed to be appointed for considering the provisions of the Bill will not therefore have the advantage of those suggestions. It is open to those members now, in supporting the motion for referring the Bill to a Select Committee, to make such observations as they think would be of help to the Select Committee in their labours.

MR. K. PARAMESVARAN PILLAI: Sir, as you rightly observed, we regret that, by a misapprehension, we allowed the principle of the Limitation Regulation Amendment Bill to be accepted yesterday without any discussion. But for such misapprehension or misconception, I am quite sure that the principle of the Bill would not have gone unchallenged, especially in view of the addendum supplied which seeks to give retrospective effect to the Regulation with a vengeance. However, as the observations we wish to make do not affect so much the principle of the Bill as the details of the several amendments themselves which are sought to be introduced, we take this opportunity to express our opinions in regard to some of them for the guidance of the members of the Select Committee. There are, no doubt, some apparently innocuous amendments among those that are now proposed to be introduced in the Regulation. There are also amendments which are positively injurious. I shall now refer to some provisions to which I must take serious exception.

In Section 5, the rule regarding the period of limitation for putting in a review petition is sought to be abrogated and a new explanation is attached to the Section to this effect:

"*Explanation:* The fact that the appellant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this Section."

In respect of this, what I beg to submit is that, in regard to the three years' rule of limitation regarding review petitions, this did not

exist in the British Limitation Act of 1877, on the lines of which our Limitation Regulation was drafted in 1887, nor does it exist in the present British Indian Limitation Act of 1908. Nevertheless, in spite of its not forming part of the British Indian Limitation Act of 1877, our legislature thought fit to introduce such a provision in our Limitation Regulation. There must apparently have been some very good reasons for introducing this innovation into our Code. It appears to me that it was the litigious habit of the people of this country that induced the legislature to introduce such a provision. We are all aware that litigants in this country are never satisfied with legal decisions and that they do not consider any decision as final, even though of the highest court. Even after a judgment is pronounced by a Full Bench of the High Court, it is not unusual for litigants to go about for advice for putting in a review petition in regard to that judgment. I think the legislature must have had this in view when they introduced a period of 3 years as the maximum period within which a review should be put in. It seems to me that this provision is a wholesome one and that it should be retained. The only reason alleged for deleting it is that it must be open to courts to correct errors whenever they are discovered. The inherent power of courts to correct errors when discovered has not been taken away by the Civil Procedure Code. I find that there is a Section in the Civil Procedure Code Amendment Bill now sought to be introduced which clearly recognises the inherent power of courts to correct errors. That, I think, is quite sufficient to meet the ends of justice. The new explanation to the Section under consideration existed in the Limitation Act in British India as originally passed in 1877 and as subsequently amended in 1908. In so far as that provision was omitted in our Regulation, we must take it that it was omitted deliberately, probably because it leaves a very wide margin of discretion in the hands of the courts in disposing of review petitions.

The next point to which I wish to draw attention is Article 14. That Article refers to suits against Government for compensation for land acquired for public purposes, and under the present law the period of limitation for such suits is ordinarily three years. There is absolutely no reason why this period should be reduced to one year from three years.

The next item to which I should like to invite the attention of this House is Explanation II to Article 119, which says that money in that Article includes grain. Apparently it seeks to extend the period of limitation by six years to suits based upon hypothecation bonds for paddy. This may seem a beneficent provision to the subject, but so far as the question of limitation is concerned, it is of little moment to the subject, whether the limitation for a particular suit is 6 years or 12 years. All that he cares to see is that the law should be clear and definite. Six years, I should think, is a sufficient time for the recovery of money or grain. Nothing is gained by extending the period of limitation from six years to twelve years. We all understand from the Statement of Objects and Reasons of the Bill why the present period has been extended by introducing this explanation. The learned mover of the Bill has therein stated that there has been some misconception in the minds of

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litigants and lawyers in regard to this matter. He says that the prevailing notion till now in regard to the period of limitation for suits on hypothecation bonds for paddy was that the limitation period for suits was 12 years. I do not know wherefrom the lawyers or the public got this notion. I find from a case reported in T. L. R., 89, that this question, viz., whether money includes grain was raised so early as in 1068 and it was then held that it did not. That was a suit on a simple bond for paddy and the question raised was identical, viz., whether money included paddy. As the answer was in the negative, when the Limitation Regulation was amended in 1068, Article 97 which referred to suits on bonds was also amended, so that the Article now reads "suits based upon money or grain". Thus the House will understand that this difficulty was discovered so early as 1068 and it was decided that money did not include paddy. The occasion was not availed of to amend Article 109 which relates to suits on hypothecation bonds for money. The Law Member says that this was an oversight. I think on the contrary that it was deliberate. As the rate of interest on paddy was higher than that on money, it was evidently thought unwise to allow the debt to accumulate in the hands of the debtor for more than six years as it meant certain ruin to him. Thus we find that neither the court nor even the legislature was prepared to interpret money as including grain, and subsequent to 1068, at any rate, there could have been no reason for misapprehension or misconception in regard to the expression 'money' in the Limitation Regulation. If there has been any such, I should say that it must have been due to gross neglect and not due to any other reason and that cannot be a ground for amending the law. The other reason given by the mover of the Bill is that, owing to this alleged misapprehension, many people have suffered loss and that therefore the legislature should intervene in order to protect them. Assuming that there has been a misapprehension, this is not the first instance in which the High Court have by their decision overruled established precedents and unsettled the law to the detriment of several vested interests. I remember that, till about ten years ago, the prevailing impression among lawyers and laymen was that the limitation period for suits for setting aside *pattahs* was 12 years. The High Court decided in one case that such suits were governed by the 6 years' rule. That was a time when the settlement operations had just ended and several people wanted to file suits for setting aside *pattahs*. They waited because they thought that they would have 12 years within which to bring their suits. But one fine morning we were told that the period of limitation for such suits was not 12 years but 6 years. Several suits must, therefore, have become barred, and several people must have suffered inconvenience and loss. Nobody thought of amending the law then, in order to give relief to those persons. Similarly, you will find that, till 1082, was to the effect that, according to the Marumakkathayam law, the acquisitions of a junior member would devolve upon the tarwad, to the

exclusion of his *tavazhi*. In 1082 these decisions were overruled and it was laid down that such acquisitions would devolve upon his own *tavazhi* to the exclusion of his tarwad. Before this decision, several alienations were made by the Karanavans and several releases of mortgages executed by them on the ground that these acquisitions belonged to the tarwad. All these alienors suffered and several tarwads came to ruin on account of the claims brought forward by *tavazhis* for recovery of monies which the Karanavans had received on behalf of the tarwad but which according to the High Court ruling, were due to the *tavazhi*. Nevertheless, the legislature never thought it necessary to intervene to protect the interests of such persons. Why should the legislature then adopt a different policy in this case where the interests of usurers alone are concerned? Even from the standpoint of natural justice, there is absolutely no reason for such interference. The interest upon paddy is 20 per cent. and at that rate, during a period of 6 years, according to my calculation, a creditor would have realised, for 100 *paras* of paddy laid out on interest, 200 *paras*, because it is well known that it is usually at the time of cultivation that persons lend paddy on interest and they collect the interest at the time of the harvest, so that, unlike in the case of money, the interest on paddy is rarely allowed to fall into arrears. The cultivator is seldom permitted to carry the harvest home without meeting the claims of his creditor for interest. So we may take it that he gets compound interest on his investment, and on that basis the amount he has recovered during the six years will amount to 200 *paras*. Of course, we may say that in one sense he certainly suffers, but he really does not suffer inasmuch as he has got back what is reasonably due to him. For these reasons, it appears to me that the amendment is quite uncalled for and unnecessary.

Then again, I particularly wish to record my most emphatic protest against the provision in the *addendum* attached to the Limitation Regulation Amendment Bill which runs as follows:

"34. (1) Notwithstanding anything contained in the Travancore Limitation Regulation, 1062, a suit for paddy or its value due under a hypothecation bond for paddy charged on immovable property may be instituted within two years from the date of the passing of the Regulation, provided that a suit on such a bond, if filed on or before the twenty-sixth day of Tulam, 1096, would have been in time if the rule of twelve years' limitation were held applicable thereto.

(2) No such suit pending at the date of this Regulation either in a court of first instance or of appeal shall be dismissed on the ground that a six years' rule of limitation is applicable.

(3) If the claim of any person for paddy or its value has been dismissed, wholly or in part, or has been withdrawn after the 26th day of Tulam, 1096, and before the passing of this Regulation either in a court of first instance or of appeal, on the ground that the rule of six years' limitation applied to such a claim, the case may be restored on an application in writing to the court by which the claim was dismissed; or in which it was withdrawn, provided that the application is made within six months of the passing of this Regulation; and on such restoration the provisions of sub-section (1) shall apply."

I strongly protest against this Section particularly in regard to clause (3) which would enable courts to reopen all suits hitherto decided in regard to hypothecation bonds for paddy. Probably, the mover had

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this in mind when he deleted the clause in Section 5 which provided that no review could be admitted after the expiry of 3 years from the date of decision. This will unsettle the whole matter and will lead to great complications. There must be some finality to everything, including judicial pronouncements. I would, therefore, once again record my emphatic protest against Section 34 which forms the *addendum* to the Bill and the attempt to give retrospective effect to it.

Another matter to which also I would demur is Article 147. That refers to applications for setting aside *ex parte* decrees. The period of limitation starts, according to the present Regulation, from "the date of executing any process for enforcing the judgment on property or person, or the date of service personally of the notice, to show cause why the decree should not be executed, where such notice is issued, whichever may happen first." In Article 147 of the amending Bill this has been altered into "the date of decree or, where the summons was not duly served, when the applicant has knowledge of the decree." Of course, I do not ignore the fact that this is the wording of the Article in the British Indian Limitation Act also. Nevertheless, I should submit that this will lead to unnecessary waste of public time in determining the question as to when the applicant obtained knowledge of the decree. The respondent would say that he had knowledge of the decree as soon it was passed. The applicant would reply that he got knowledge of the decree only subsequently. In that case there must be an enquiry, evidence must be taken, and the court will have to decide when the applicant actually obtained knowledge of the decree. Rather than do this, it would be well to saddle a party on whom some process has been served in execution with knowledge and the court will then have something definite to go upon. As it is, the expression used in the Article is very vague, and it would be very difficult to prove when a person obtained knowledge of the decree.

I may also submit that there is no urgency about this Bill. It could very well wait until the Civil Procedure Code Amendment Bill is passed.

DEPUTY PRESIDENT: There is no reference to the Civil Procedure Code in this Bill.

MR. K. PARAMESVARAN PILLAI: It is not quite correct to say that there are no references to the Civil Procedure Code in the Limitation Regulation and that it is intended to be self-contained, because I find that a reference to Section 41 of the Civil Procedure Code is made in Articles 162 and 163. The reference is not to the present Code, but to the Bill which seeks to amend the Code. This is anomalous and hence I say that this Bill might well wait until the Civil Procedure Code Amendment Bill is passed.

MR. V. SUBBA AIYAR: I do not want to interrupt the member. But I may assure him that the progress of both the Bills will be so adjusted as to admit of their being passed simultaneously or the one soon after the other.

DEPUTY PRESIDENT: Apart from that, I think that Mr. Paramesvaran Pillai was entitled to raise this objection. You are entitled to make a reference only to the existing Code and not to the amending Bill. That Bill may or may not be passed by the Council later on.

MR. K. PARAMESVARAN PILLAI: That reference is, as I believe my friend will admit, to the Section of the Bill which is to be hereafter passed and not to the existing Code. Therefore, as there is need to refer to the Section of the new Code, this Bill may very well wait until the new Code is passed into law. With these remarks, I support the motion for referring the Bill to a Select Committee.

MR. JOSEPH PANJIKARAN: Sir, in supporting the motion for referring the Limitation Regulation Amendment Bill to the Select Committee, I have a few observations to make, for the earnest and anxious consideration of that Committee. The first thing that I have to urge on their attention is that Section 34 which is sought to be included in the Limitation Regulation should not be allowed to find a place in that Regulation. The fact that this Section is not included in the draft Bill, but is only tacked on to it in the shape of an *addendum* looks very much like an indication of its fate; for coming events cast their shadows before. The drafter of the Bill also, I think, foresaw that this Section would not be acceptable to the House.

MR. V. SUBBA AIYAR: No, no.

DEPUTY PRESIDENT: At present you need not anticipate the observations of the House.

MR. JOSEPH PANJIKARAN: There are two kinds of hypothecation bonds, one for paddy and the other for money. In the case of money the period of limitation is 12 years, while in the case of paddy it is 6 years. Some persons, who have advanced paddy on the security of immovable property, instead of bringing their suits for enforcing payment within the six years allowed by law, have waited longer. After the lapse of 6 years some of them instituted suits. Of these, a few fought their rights up to the High Court with the result that they were nonsuited. Some suits have been dismissed in the lower courts and are pending in appeal. Some of those paddy-lenders have not yet come to court and are waiting to see the fate of this Bill.

In regard to the first class, *i. e.*, those who have fought their rights up to the High Court, the Bill wants to give them six months' time after the passing of the Regulation to put in restoration petitions before the original courts, thus reopening the whole litigation. With regard to the second class of people, *i. e.*, the appellants in the pending appeals mentioned above, the Regulation requires that these appeals should not be dismissed on account of the fact that the suits were instituted after the six years' period fixed in the existing Regulation. With respect to those people who have not gone to court till now, the Bill says that they must be allowed to wait for another two years for instituting suits after the passing of this Regulation.

[Mr. Joseph Panjikaran.]

I submit that this looks very extraordinary, and I do not see any reason why such an extraordinary procedure should be adopted. The reason given in the Statement of Objects and Reasons is that the 'prevailing notion' among the people seems to have been that the period of limitation for hypothecation bonds for paddy was similar to the one provided for hypothecation bonds for money. A recent Full Bench ruling of our High Court has disturbed this prevailing notion. That is what the Statement of Objects and Reasons to this Bill says. Two assumptions are possible in this state of affairs. It may be that the prevailing notion was the correct interpretation of the law that now exists. Let us suppose that it is the correct interpretation of the Limitation Regulation as it is. Then, the High Court decision is wrong. If their honours went wrong in the interpretation and application of the law, is it the duty of the legislature to step in and correct their honours' decision?

DEPUTY PRESIDENT: Certainly, the legislature exists for it. It is one of the primary functions of the legislature. If, in its judgment, the High Court have gone wrong, the legislature should correct it.

MR. JOSEPH PANJIKARAN: I do not think that I have been understood. I shall state my case once again. The law on a certain point is clear and the High Court misinterprets and misapplies the law. Sir, I beg to ask, is it the duty of the legislature to interfere? That is my position. I think that the remedy of the aggrieved party is to approach the High Court again with a review petition and try to convince their honours of the mistake that they have made in the application of the law, and not to run up to the legislature calling upon it to amend the law. Now that the law is clear and that the High Court have misinterpreted and misapplied it, where is the guarantee that even after the amendment the High Court would not do the same? So, if "the prevailing notion," was correct, i. e., in accordance with the existing law, legislative interference would be useless, unnecessary and uncalled for.

Now let me deal with the other side of the question. Let us suppose that the "prevailing notion," was wrong. As pointed out by my friend, Mr. K. Paramesvaran Pillai, it was held as early as 1068 that money would not include grain. So, the prevailing notion was certainly wrong.

DEPUTY PRESIDENT: Beyond a casual reference, you need not discuss it in detail. We have to accept the correctness of the interpretation of the existing law as held by the High Court. You cannot go behind the High Court judgment.

MR. JOSEPH PANJIKARAN: So, here is a case where the law was not understood, where there was ignorance of law. Can the legislature interfere for the remedy of persons who, on account of ignorance of law, committed mistakes? Ignorance of law is no excuse. That

is one of the basic principles underlying the administration of all justice, which I think should not be violated in this particular case. So, under either of these assumptions, I do not see any reason why the legislature should go out of its way to protect some people who may have, or are supposed to have, incurred some loss. It may be argued from the other side that it is very hard that a man who has advanced paddy should not get it back. There is some force in this argument. I would, in answer, say that first of all every law of limitation is hard. So, would it not be better to have no limitation law at all, than try to amend it to suit the convenience of a few people alone?

Again, there is a serious inconvenience and hardship to which innocent people will be put on account of this amendment. There is no knowing what all subsequent transactions have taken place concerning the properties comprised in these barred hypothecation bonds for paddy. After these bonds have become barred, it may be that some of the properties concerned have been hypothecated, mortgaged or sold to *bona fide* lenders or purchasers. What will be the effect of the proposed amendment on these transactions, and the parties who have advanced money under them? Will they not be deprived of their money and property? And for whose fault? Certainly for no fault of theirs, but only because the legislature wants to favour a set of negligent people. Then again, I am at one with my friend, Mr. K. Paramesvaran Pillai, in thinking that these paddy-lenders have within the period of 6 years realised not only reasonable interest, but much more than their capital. In this connection, the observations made by no less a personage than our late distinguished Dewan Peishkar, Mr. Nagam Aiya, may be brought to the notice of the House with advantage. In Volume III of our *State Manual* at page 153, he says concerning paddy interest as follows:

"This is of course much higher and prevails to an injurious extent in North Travancore, i.e., all over Kuttanad, where wet cultivation known as *punja* cultivation is carried on in the low swamps on the borders of the lagoons which are drained off their water and sown with paddy once a year or at longer intervals. Except for the draining of the water and the raising of the bunds..... my informant is of opinion that there may not be more than one or two cultivators in a whole taluk who can manage without the "polikadam" creditor's help. Moreover, for every little ceremony in the creditor's family the debtor has to make very suitable presents for the value of which he is not given credit at the time of settling accounts."

DEPUTY PRESIDENT: Your time is up.

MR. JOSEPH PANJIKARAN: I have only one or two words more to speak. The next objection that I would take is in regard to the explanation to Article 119. This is also very objectionable. We cannot put money and paddy on the same footing. In the case of money, the ordinary rate of interest is only 12 per cent. and interest can accrue only up to half the principal amount, whereas in the case of paddy, the ordinary rate of interest is 20 per cent. and interest can accrue up to an amount equal to that of the principal. So, there will be a temptation on the part of the paddy-lenders to allow the transaction to stand over for a longer period. The result will be that by a slow process

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the assets of debtors might be wholly devoured by a small advance of paddy. It may be asked, why cannot the debtor be prompt in paying his debt? By way of retort, I would ask, why not the creditor be prompt in demanding back the paddy he has advanced? There are some people who are not very prudent, and are there not many legislations which are intended to safeguard people against their own imprudence? So, unless and until paddy is brought down to the level of money with respect to the rate and accumulation of interest, I am against extending to paddy hypothecation bonds the period of limitation provided for in the case of hypothecation bonds for money.

MR. P. K. NARAYANA PILLAI: Sir, statutes of limitation are generally known as statutes of rest and repose. But in the present instance, matter for much unrest and disturbance has been provided for in the Bill presented to this House. In the kick and recoil of the legislative apparatus resulting from the vehemence with which this Bill has been projected by its imperturbable operator who, by my friend, Mr. Velu Pillai, has been pictured to us as sitting in a dark chamber, many vested rights, I mean rights which received their quietus under the Act to be repealed, have been crushed and jammed. In the case of a good many repealing statutes generally, rights which have been perfected under the Act repealed are saved. Comparison may be made of the provisions of the Limitation Regulation of 1062 on this particular point. This particular Section of the existing Regulation has been abrogated in the Bill presented to the House, evidently because the mover of the Bill is bent upon disturbing the rights which have already been acquired under the present statute. With respect to the operation of statutes, courts are extremely loath to interpret them retrospectively. To borrow the language of Mr. Justice Mukherji in 24 *Calcutta Weekly Notes*, page 1011, retrospective interpretation of a statute "is opposed to good sense and justice". Here what the learned mover wants us to accept is not retrospective interpretation, but retrospective operation so as to nullify certain pronouncements of the High Court and subordinate courts. That is what is attempted in Section 34 of the Amended Bill. Some of these decisions, I notice, are Full Bench decisions assented to by His Highness the Maha Raja, and I doubt the propriety of this Council considering a Bill to invade and nullify the pronouncements of the highest tribunal, placed beyond the pale of criticism by the seal of the Sovereign Authority. If it is a question of hardship that has prompted the mover to introduce the particular Section, I mean Section 34, I raise the question whether, in the past, not only in any of the numerous instances that have already been pointed out by my friend, Mr. K. Paramesvaran Pillai, but in any instance whatsoever, there was any similar curative and magnanimous spirit evinced by the legislature on behalf of disappointed litigants in Travancore. We all recollect that in 9 T. L. R. with respect to the question whether a *pura-vaippu* document would extend the period of limitation prescribed for

redemption of a mortgage, it was ruled by the High Court of Travancore that it would not. It necessitated the enactment of an additional Section in the Limitation Regulation which is about to be repealed. That Section is 19.A, wedged in between Sections 19 and 20. It was not then deemed necessary or just to give it retrospective effect. How many persons must have suffered under the general impression that the execution of *puravaippu* deeds would prolong and extend the period of limitation for redemption of mortgages? Evidently the legislature had no pity upon these persons, that is, the mortgagors, who entertained illusions about the saving virtues of *purakadam* deeds. Turning to British India, we have got the Mussalman Wakfs Validating Act. The history of that Act may probably be known to some members. It was the outcome of a decision of the Privy Council holding that many dispositions of property made by Mahomedans under the name of Wakfs were opposed to law and could not be enforced by courts. There was a general outcry in British India in the Mussalman community as soon as the Privy Council's decision was made known. Then the legislature introduced the enactment known as the Mussalman Wakf Validating Act. Even this Act was not given retrospective operation. So far as our Travancore Legislative Council is concerned, I know of only one instance in which the legislature thought fit to give an enactment retrospective operation. That was in the case of my friend, Mr. K. P. Raman Pillai, who found himself face to face with the Secretary of State in a civil case. Except for that solitary instance explicable by itself, I have not known in Travancore of any retro-active legislation and I am unable to recall to my mind any Act of the British Indian legislature on this point. So far as the American Constitution is concerned, there is a provision discouraging *ex post facto* legislation, so much so, that I am decidedly of opinion that this attempt on the part of the mover to revive the rights and liabilities which have been settled under the present Regulation and under the power vested in the High Court by the Civil Procedure Code as well as by the High Court Regulation cannot be supported or encouraged. Further, I find, so far as the law is concerned, that the decision of the High Court reported in 36 T. L. R., 300, is unassailable. The remedy has to be supplied by the legislative body if it considers that paddy transactions require further safety. It cannot be said that the decision of the High Court is wrong. I understand that the mover himself appeared before the High Court in that case and pleaded that suits on hypothecation bonds for paddy should be governed by the six years' rule.

MR. V. SUBBA AIYAR : Yes; I was paid for it.

MR. P. K. NARAYANA PILLAI : And he succeeded. Now he comes here and tells us things which do not hang well together with the prior arguments in court.

DEPUTY PRESIDENT : That was in the province of an advocate. He must protect his clients' interests.

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MR. P. K. NARAYANA PILLAI: Sir, he was instrumental in bringing about the decision. I referred to the matter only to show that the mover cannot consistently complain that the decision is faulty. If it is a case of faulty provision of law, and if that is to be corrected, correct it by all means. If the law was an ass, why should people suffer for proving it to be such? If the law was faulty, it was the fault of the legislature. That is practically the fault of the Government. If Government are extremely solicitous in the matter, Government should make the required reparations. Why should the victorious party be called upon to pay the defeated party? That is the position. So with respect to this attempt to reopen questions already set at rest I am certainly protesting, and I particularly emphasise this aspect of the matter, so that the Select Committee may deal with the particular portion of the Bill as it deserves. There are other matters which may all be dealt with by the Select Committee and it will be time for us to reconsider the Bill on its reappearance in the Council.

MR. T. K. VELU PILLAI: Sir, I wish to add a word in support of what has been said by my friends. I had originally no intention of saying anything on this Bill. But the points raised are so important that one man's support, if it is available, should not be lost to a just cause. In law, there is nothing so important as finality. Even a wrong decision has to be scrupulously maintained, though it has occasioned hardships to particular litigants. The law may be changed, but when that is done, a previous decision should never be set aside directly or indirectly. Now, whether it is criminal or civil law, whether a suit relates to realisation of money or recovery of immovable property, or whether the criminal proceedings relate to matters of life and death, this principle is one and the same. My friend, Mr. Subba Aiyar, wants to give retrospective effect to matters of a civil nature. I would ask him one question. It is this. Suppose in obedience to a judgment passed by the High Court in a referred case, a case of murder, the offender was hanged, and, if Mr. Subba Aiyar wants to save him, I ask, is it physically possible? The same, so far as principle is concerned, is and should be the case with civil law. We are not to disturb rights whether under a decree or in respect of titles that have accrued to individuals. To set aside the decision of a competent superior court of the land by the pen of the legislature, especially when the hardships are themselves of a questionable kind, is certainly wrong, and I, therefore, oppose the Section.

MR. G. PARAMESVARAN PILLAI: Sir, I wish to say a word or two about the Bill. If the amending provision is intended to reopen cases that have already been disposed of, really that is a matter which I must certainly protest against and that for the very reason that has been advanced in this very House by my learned friend, Mr. Subba Aiyar himself. It stood him very well indeed, when he introduced and piloted that very famous Land Assignment Bill, that vested rights

should be respected. Indeed, that was the very fabric of his arguments then. There was only a limitation period of one year so far as suits against Government were concerned and Mr. Subba Aiyar never lacked in enthusiasm in supporting—rightly too—his own case. In this matter, I do not know why he has taken a different view altogether. Vested rights ought to be respected and for that reason I would certainly protest against any amendment being made, which would interfere with the decision of cases already filed and disposed of.

MR. J. JOHN NIDIRY: Sir, I am also one of those who, like Mr. K. Paramesvaran Pillai, were under a misapprehension yesterday with respect to the motion brought forward by Mr. Subba Aiyar regarding the Limitation Regulation Amendment Bill. I am glad that an opportunity has presented itself to me for offering a few observations for the anxious attention and consideration of the Select Committee to whom the Bill is proposed to be referred. As the matter about which I have to make my observations has already been ably and cleverly dealt with by the previous speakers, I have not got to say very much except in regard to the new Section 34, to which I take serious objection. I think that this Section ought not to find a place in our Statute Book. In my opinion the legislature should not interfere with vested rights as a rule. Again the policy of the legislature should always be not to pass a law which would have retrospective effect. I do not know whether there has been any previous instance of a similar kind in our own Legislative Council. My wonder is why such a serious deviation has been thought of with a view to help persons with whom we have the least sympathy—I mean the paddy-lenders. As has been pointed out by Mr. Panjikaran, it is a well-known fact that money-lenders as a class and especially paddy-lenders are very obnoxious and undesirable beings in the eyes of the agriculturists who form the bulk of the population in this country. As such, it is very strange that Government and their Law Member should have found time and opportunity to come to the rescue of such persons when there are others who form a large number and who have been put to greater hardship by certain rulings regarding the common law of the country. Strangely enough, we find that the helping hand of the Government and of the Law Member has not been extended to harder cases in which more people are concerned. Under these circumstances, I am sorry that my learned friend, the Law Member, has come to the rescue of this paddy-lending class with such a cumbersome procedure of law-making with retrospective effect and so on, which should be avoided as far as possible. With these few remarks, I request the serious attention and consideration of the Select Committee with a view to delete the same from the Bill.

MR. DOMINIC TOMMAN: Sir, I fully support what Mr. K. Paramesvaran Pillai said against the inclusion of the new Section in the Bill.

MR. K. C. RAJA RAJA VARMA: Sir, I do not want to take up the time of the Council in dealing with the points that have already been brought to the attention of the House by my friends. I wish to draw

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the attention of the House to another Article, *i. e.*, Article 13, which, it seems to me, is likely to cause some hardship to the public. It runs thus :

"Against Government to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears."

The period of limitation prescribed for this Article is one year from the date of payment. What I would point out in this connection is that in some cases people who remit money to the Government under protest, put in a protest petition to the officers, and the officers very often may dispose of that petition on the date on which money is remitted to Government. But, on many occasions, the officers take some time to decide whether there is anything justifiable on the part of the petitioner to file a petition for reconsidering the matter; or the petitioner may desire to prefer an appeal against the officer's decision for a reconsideration of the order for the payment of money. If the officers take a long time to decide the petition or the appeal, then the petitioner would not have the benefit of this Article prescribing one year for him to go to the court, and would thereby be put to great inconvenience and hardship.

In such cases, I submit, it is only reasonable to fix the period of limitation from the date of the final order passed on the protest petition or appeal preferred against the order of the officer concerned.

MR. N. RAMAKRISHNA PILLAI: Sir, I wish to make a few suggestions for the consideration of the Select Committee. I shall refer to the Sections and Articles which require revision.

Section 14. The concession by way of time to go to the right court given in the existing Regulation, may be continued in the new Regulation also. This concession has been very useful to litigants in the past and nothing is to be gained by its omission in the present Bill. Our law has been more lenient in such matters, and the British Indian Act need not, therefore, be followed in this instance.

Section 19. Clause (1) seems to require some amendment if possible. In 32 Cal., 1077, it was held that an acknowledgment by a mortgagor in favour of a first mortgagee operates as against a second mortgagee whose title originated *before* the acknowledgment was given. This decision has been followed here in 33 T. L. R., 237. The English decision cited in that case was not followed on the ground that the express terms of the Limitation Regulation had to be adhered to. The present Section is the same as the old Section and these decisions will therefore be applicable under the new Regulation. If the view of the Calcutta High Court is correct, the right of one man may be taken away by the act of another and it would be quite open to a mortgagor after he has transferred the equity of redemption to give an acknowledgment

to the mortgagee so as to extend the period of limitation as against the purchaser of the equity of redemption. The introduction in the Section of the words "when such person had a subsisting interest in the property" would seem to solve the difficulty. At any rate, this aspect of the question has to be carefully considered.

Section 22. The exception to the Section gives too much power to the manager or the karanavan and indirectly defeats the purpose of securing the participation of the co-parceners or *seshakars*, as the case may be, in the original transaction. The absence of any such provision cannot certainly be deemed to be a hardship to the creditor. It seems to me more equitable to make provision for acknowledgment by all the parties to the transaction or their representatives.

Article 114. In the British Indian Act, the time from which the period begins to run is the date when possession is taken by the alienee, and not the date of registration. Here a differentiation is made between cases of alienations under registered documents and oral alienations. This distinction, though founded on the fact that oral alienations are permissible under the law in Travancore, appears to me to be absolutely unnecessary. Cases of oral alienations are very rare and the practical effect of the distinction sought to be made is to make the date of registration the starting point of limitation in almost all cases of alienations. There are certainly cases where it may be convenient to rule that registration is equivalent to notice, but it seems to me unreasonable to make a person suffer for his failure to make frequent searches in the sub-registry office to find out cases of secret alienations which he may have the right to question. The safest and the most equitable course to adopt is to take the date of possession as the starting point of limitation in all cases.

Article 119. The effect of Explanation II now introduced in this Article is to place bonds for loans of paddy on the same footing as bonds for loans of money. The object of this amendment is merely to give relief to those creditors who have suffered on account of the recent Full Bench decision in 36 T. L. R., 300; for no other reason is, or could be, suggested why the period of limitation in respect of transactions concerning a commodity of so fluctuating a value as paddy should be extended to 12 years as in the case of money. Loans of paddy are largely resorted to by punja cultivators and are contracted for short terms, generally for one agricultural year. Paddy interest compared with money is always very high and loans of paddy for long terms are, as a matter of fact, extremely rare. Paddy loans are regarded as much more ruinous to the debtors than money loans and creditors are also more prompt and vigilant in collecting their dues. I do not see any justification for extending our sympathy in favour of those apparently rich creditors who have been sleeping over their rights, and for this purpose unsettling the law and bringing unexpected trouble upon those poor debtors who deserve our sympathy much more than the rich and negligent men in whose interests an alteration of the law is now proposed. The statement that the prevailing notion till now was that

[Mr. N. Ramakrishna Pillai.] The period of limitation of bonds evidencing loans of paddy were just as bonds for money enforceable within 12 years does not seem to me to be entirely correct. The few creditors who are said to have suffered by the decision and for whose sake the law has to be changed, have taken the risk of an interpretation of the statute by the courts and they are not entitled to any relief in the way proposed by the learned mover of the Bill. The period of limitation in respect of bonds for paddy need not, in any case, be extended beyond 6 years and the retrospective application of the law of limitation should not give rise to the revival of old and already barred claims in respect of transactions of paddy.

Article 147. The change in regard to the starting point of limitation, however convenient, is likely to cause injustice in several cases. The question of fact concerning the applicant's knowledge will be very difficult to decide correctly, and it seems to me that the better course is to adhere to the old rule. It has also to be remembered that the court has no discretion to enlarge the time in this instance. There are recent decisions of our High Court concerning this Article which may also be looked into in making the amendment. The objection to this Article applies to Article 152 also.

Article 153. The shorter term of 30 days for leave to appeal as a pauper given in this Article needlessly curtails the time allowed in practice for preferring applications to the High Court. There is no harm in giving a liberal extension of time in favour of the pauper appellant so as to give him some time to prefer an application to the High Court to admit the appeal *in forma pauperis* as is allowed for preferring an appeal.

Article 160. The period of limitation provided is only 90 days. It is 6 months in British India. There, by Act XXVI of 1920, an amendment was made in the law by which the period of limitation under Articles 158 and 159 (Br. Art. 176 and 177) was reduced from 6 months to 90 days, and that under Article 160 (Br. Art. 178) was left untouched. While following the recent amendment in British India in respect of Articles 158 and 159, the period of limitation in the case of Article 160 also seems to have been reduced. The filing of an award whether referred to arbitration by order of the court or of an award made without the intervention of the court is an important matter and the period of 90 days allowed is not sufficient.

With regard to the amendment indicated in the Statement of Objects and Reasons by adding the provision contained in Section 34, all that I have to say is that on no account should any chance be given to those few creditors who were prepared, and who evidently could very well afford to risk their rights, to reopen the question and unsettle the decisions already passed. If the longer period is proposed to be adopted in the case of paddy bonds, the effect of Section 34 will be to revive controversies supposed to have been laid at rest by the Full Bench

decision of the High Court. As the law of limitation is retrospective in its operation a special provision limiting the extent of its operation may be inserted in any case.

MR. V. SUBBA AIYAR : Unless it is so said, it will not have retrospective effect.

MR. N. RAMAKRISHNA PILLAI : All laws of procedure are retrospective generally in their operation. This effect may be curtailed by special provision.

MR. PAUL V. DANIEL : Sir, the law of limitation curtails the rights to which a man is naturally entitled. Even out of pure love and sympathy for the opposite party one cannot wait longer than the period allowed him under the law of limitation to go to a court of law for any remedy he wants. Though the opposite party does not set it up as a defence, the court is bound to dismiss the suit. Certain instances referred to by the learned brothers on this side of the House come under certain Regulations which create or recognise certain rights. One of the most useful and reasonable changes introduced in the present Bill is that embodied in Article 119. I heartily welcome the treatment accorded to paddy in the said Article. Paddy is treated on an equality with money. My earnest desire is that, in the matter of interest also, paddy should be given an equal treatment with money either by amending the Regulation of 1010 or by incorporating a separate Section in the new Procedure Code. The fact that certain injuries resulted in certain cases where a particular law was not amended as proposed to be done at present, cannot justify the position taken up by some of my learned brothers on this side that this portion of the law also should continue unamended, as suggested by the learned Law Member. If by the introduction of Section 34 any sound principle of law is not sacrificed, which I think is not, there is no harm in introducing it.

MR. S. SUBRAHMANYA KARAYALAR : Sir, time is very valuable for this House as it is saddled with innumerable work which has to be attended to within a short time. So repetition, or கூறியது கூறல், as it is said in Tamil, should be avoided as far as possible, if any substantial work is to be got through by the House. Hence, acting upon that principle, I am not going to repeat what has been said by my friends on this side already. I heartily support their views on the several points already discussed. The only suggestion that I have to make to the Select Committee is this. Wherever the present Regulation fixes a certain period of limitation and the Bill tries to cut it short, the Committee should not pay any heed to it. But, if the Bill tries to extend the period of limitation, I would request them to leave it unmolested.

MR. N. PADMANABHA PILLAI : Sir, much has been said in connection with this controversy and I do not propose to drag on the discussion. I may, however, assure you, Sir, that I myself felt rather very sorry that the members of the legal profession had not the opportunity yesterday to contribute their criticisms and suggestions for the consideration

[The Deputy President.]

of the Select Committee. I hope that the criticisms now offered on this motion will be of material help to the Select Committee in examining the provisions of the draft Bill and I also support the measure.

MR. V. SUBBA AIYAR: I am extremely thankful to my friends on the other side of the House for having given me an opportunity to know what their views are on some of the important points contained in the Bill. I do not think I need take much of the time of the House, because the principle of the Bill has already been affirmed and we are now concerned only with the suggestions made by some of the members for the consideration of the Select Committee. At the same time, I do not like to leave unchallenged one or two points touched upon by the members on the other side. I may also explain to the House the particular circumstances which necessitated the introduction of some of the provisions objected to. But for those circumstances, I would not have troubled the House by replying to all the points raised in the debate.

In the first place, with reference to clause 5 about review petitions, my friend, Mr. K. Paramesvaran Pillai, thinks that the rule of three years should be there. I believe he knows that it is a matter of every-day practice in the High Court that even this three years' limit is not allowed. After three months, nobody is allowed to prefer a review petition, unless there is sufficient excuse for the delay. If a review petition should be admitted after three months, the court has to be satisfied about the cause of the delay. In the exercise of such discretion there is no use in imposing a time-limit upon the court. The Bill provides that it may be preferred at any time, if the delay is explained. If it is not explained, the petition will not be admitted. It is said that there must have been sufficient reason for not putting in this provision when the old Regulation was drafted. Unfortunately, this Regulation was drafted at a time when there was no Legislative Council. We are not now in a position to know what induced the legislature to introduce this restriction. Then with reference to the explanation, parties are in some instances misled by wrong legal advice, though given *bona fide*, and they act upon such advice. In order to make the point clear, so that the delay caused in the presentation of appeals in the proper court may be excused, I have put it in. As far as possible, the rigour of the Limitation Regulation is relaxed. The more important objection is with reference to Section 34. Mr. P. K. Narayana Pillai referred to the fact that I was in some way responsible for the mischief that was caused in the 36 T. L. R. case. It may be so. We, lawyers, as everybody knows, have to place our arguments before the court, and, in the case in question, the High Court accepted my argument.

MR. G. PARAMESVARAN PILLAI: May I know whether it is not the duty of an advocate to propound good law?

DEPUTY PRESIDENT: I think you are not in order.

Mr. V. SUBBA AIYAR: When the High Court decides in a particular way, we must take it to be good law, for they will not lay down bad law. It may sometimes be that the legislature has not expressed itself clearly and, consequently, the interpretation may not be in accordance with the intention of the legislature. In such cases, it is the duty of the legislature to make the language quite clear. Several people, both debtors and creditors, thought and even told me that the period of limitation for a hypothecation bond for paddy was 12 years. Both debtors and creditors agreed that it should be so. There was a strong protest, and memorials were received in the matter. It was after all that that this provision was put in.

Mr. G. PARAMESVARAN PILLAI: May I know from whom the memorials were received?

Mr. N. RAMAKRISHNA PILLAI: May I know how many creditors have been suffering?

Mr. V. SUBBA AIYAR: All these papers will be placed before the Select Committee. I am not able to show them now, because I have not brought them here.

Mr. T. K. VELU PILLAI: I suppose it is a right and not a favour.

Mr. V. SUBBA AIYAR: I never said that it was a favour at all. Unless you know all about it you may not be in a position to see whether you have got a right to guarantee that these papers will be placed before the committee. In regard to the 10 T. L. R. ruling, I only want to say that, though a subsequent amendment was made in accordance with that ruling, there was still a very serious omission. Article 109 was kept alive, and this weighed with their honours in the 36 T. L. R. case. The definition of "bond" in the Regulation has also not been amended.

Mr. JOSEPH PANJIKARAN: May I know whether Mr. Subba Aiyar takes it to have been a mistake on the part of the legislature or an intentional omission?

Mr. V. SUBBA AIYAR: Not at all intentional. Because they wanted to rectify an error, the word "grain" was introduced in Article 97. It was held by the High Court that in one important Article an amendment was made, but not in another equally important Article. All the same, I understand that, in the Alleppey District Court, all the suits on hypothecation bonds for paddy were brought even after six years and were decreed without any opposition. I am open to correction. It was that idea that was given effect to.

Then Mr. P. K. Narayana Pillai said that this was an extremely novel piece of legislation, retro-active and all that. I shall only remind him of Section 31 of the Limitation Act in British India, where the prevailing notion was that the period of limitation for a suit for foreclosure or for a suit for sale was 60 years, while the Madras High Court held it to be 12 years. The Privy Council agreed with that view and

[Mr. V. Subba Aiyar.]

ultimately the legislature introduced Section 31. The wording there is exactly the same as the wording in Section 34 of this Bill, so that there is a precedent for this. Without such a precedent, I would not have put in the Section.

MR. T. K. VELU PILLAI: I want to ask whether any error committed in the Madras Presidency should be followed by us.

MR. V. SUBBA AIYAR: Why should you say "error"? I am explaining my position. In regard to the practice at Alleppey, I hope my friend, Mr. P. K. Narayana Pillai, will be able to enlighten us later on.

Then Mr. P. K. Narayana Pillai attacked me saying that I omitted an important provision, *viz.*, that the repealing Regulation will not affect vested interests. Though there is such a provision in the existing Regulation, whether we insert the provision or not, no vested right shall be affected by any subsequent enactment, unless specific mention is made to that effect. Section 7 of the General Clauses Regulation applies to all Regulations, and there is no use in repeating that clause in every Regulation. That was the reason why it was not mentioned in this Bill. Of course, it is open to the Select Committee to thresh out the whole matter. After that, the Bill will come again before this Council, and it is open to every member to move amendments. With these observations I beg to move again that the Bill be referred to the Select Committee.

DEPUTY PRESIDENT: Much has been said by some of the members in connection with the controversial points in the Bill; and I do not propose to contribute to the discussion. I may assure the members that I felt very sorry that the members of the legal profession did not contribute their intelligence, criticisms or suggestions for the consideration of the Select Committee. I am extremely happy to learn that the contribution to the discussion of the subject in to-day's debate will be of material help to the Select Committee in examining the provisions of the draft Bill.

The question before the House is that the Limitation Regulation Amendment Bill be referred to the Select Committee.

The motion was then put to the vote and carried.

DEPUTY PRESIDENT: The Secretary will now read the title of the Bill.

The Secretary read the title of the Bill.

MR. V. SUBBA AIYAR: I beg to move that the Select Committee may consist of the following members:

Mr. S. Krishna Aiyar, Mr. J. John Nidiry, Mr. N. Kumaran, Mr. K. P. Raman Pillai, Mr. N. Ramakrishna Pillai, Mr. K. Paramesvaran Pillai, Mr. Paul V. Daniel, Mr. R. Krishna Pillai, and Mr. V. Subba Aiyar, to report within three months.

MR. JOSEPH PANJIKARAN: I propose the name of Mr. G. Paramesvaran Pillai also.

MR. G. PARAMESVARAN PILLAI: I propose Messrs. Joseph Panjikaran and N. Padmanabha Pillai.

MR. V. SUBBA AIYAR: I have already put in 9 gentlemen.

DEPUTY PRESIDENT: May I know how many members we should have? I think you may add one or two more.

MR. V. SUBBA AIYAR: I have no objection. I omitted some names, because those who are already on the committee in regard to the Civil Procedure Code wished to be excused from being put in as members of the committees for other Bills. I shall include Messrs. N. Padmanabha Pillai and Joseph Panjikaran.

MR. S. PARAMESVARA AIYAR: I second the motion.

DEPUTY PRESIDENT: The question before the House is that the committee do consist of the eleven members just mentioned.

The motion was carried.

MR. V. SUBBA AIYAR: Yesterday one thing was omitted. The Chairman of the Select Committee as regards the Civil Procedure Code Bill was not nominated.

DEPUTY PRESIDENT: Both with reference to the Civil Procedure Code Amendment Bill and the Limitation Regulation Amendment Bill, I appoint Mr. V. Subba Aiyar as the Chairman of the Select Committee.

THE REFORMATORY SCHOOLS BILL.

MR. V. SUBBA AIYAR: Sir, I beg to move that the Reformatory Schools Bill be read in Council.

DEPUTY PRESIDENT: Has the Bill been published in the Gazette?

MR. V. SUBBA AIYAR: Yes, Sir.

DEPUTY PRESIDENT: Then I suppose you do not require the leave of the House to introduce the Bill.

MR. V. SUBBA AIYAR: No, Sir.

MR. S. PARAMESVARA AIYAR: I second the motion.

DEPUTY PRESIDENT: Let us now discuss the principle of the Bill.

MR. V. SUBBA AIYAR: Sir, I shall now explain the principle of the Bill. In the working of the existing Reformatories Regulation, two difficulties were pointed out by the District Magistrate, Trivandrum. They were these. In one instance, an inmate of the Reformatory was convicted and sentenced to imprisonment for an offence committed by him while in the Reformatory. Under the existing Criminal Procedure Code, courts are not competent to award concurrent sentences, so that the second sentence could take effect only after he was discharged from